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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

December 22, 2005

The Honorable Arlen Specter
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you know, when Judge Samuel Alito applied for his job in the Office of Legal Counsel in the Meese Justice Department in November 1985, he submitted a list of his memberships and other activities to impress Attorney General Meese and Assistant Attorney General Charles Cooper with his enthusiastic "philosophical commitment" to their particular constitutional, legal, and political point of view.

Among the organizations he listed was "Concerned Alumni of Princeton" (CAP), an organization created in 1972, the year Judge Alito graduated. The organization was described in the press at the time and in its own literature as opposed to the increasing number of women, African Americans and Hispanics at the university. The organization also published articles critical of the rights of the disabled.

Our former Senate colleague Bill Bradley, a graduate of the university in 1965, initially joined the advisory board for the group's magazine, "Prospect," but publicly separated himself from the group in 1973, because he felt it promoted a "right wing view" rather than the "balanced view" he had been led to believe it would present. In 1975 an official report by a committee of Princeton alumni that included William Frist, now Senator Frist, concluded that CAP's "distorted, narrow and hostile view of the University" had "misinformed and even alarmed many alumni" and "undoubtedly generated adverse national publicity."

The heated debate in the University community and in the press continued throughout the life of the organization from 1972 through 1986. For example, Senator Bradley's resignation letter was published in "Prospect" in September 1973, a *New Yorker* article covered the controversy in 1977, and the *Princeton Alumni Weekly* carried articles on the group as late as April and June of 1986. "Prospect" was originally mailed to CAP members and contributors, and beginning in 1974 to all graduates listed in the Alumni Directory. The *Alumni Weekly* was mailed to all living Princeton graduates.

It appears from recent press interviews that Judge Alito became involved with CAP through one of CAP's founders early in CAP's history. In spite of the prominence he gave to CAP in his 1985 application to the Justice Department and its well-known and

controversial activities, Judge Alito's participation in CAP was not disclosed in the public documents relating to his 1987 nomination as U.S. Attorney for New Jersey or his 1990 nomination to the U.S. Court of Appeals for the Third Circuit. The subject was not discussed at his 1990 hearing. In fact, Senator Bradley, based on a recommendation Judge Alito had obtained from the judge for whom he had served as a law clerk, introduced and endorsed Judge Alito "one hundred percent" for the Third Circuit.

In view of CAP's troubling opposition to equal educational opportunity for women, minorities, and the disabled, it is important for the Committee to learn more about Judge Alito's involvement in this organization. However, even after his recollection was refreshed by a "document I recently reviewed" (presumably his 1985 job application to the Justice Department), Judge Alito's response to our recent questionnaire states that he cannot remember anything about his membership in CAP beyond what is stated in that document. Unless a further reading of the many documents relating to this issue restores his memory of the matter, we are unlikely to obtain any further information from him on this potentially important subject.

Clearly, to understand fully the importance of the partial facts known from secondary sources, and to avoid the prospect of a delay in our schedule to obtain the full story, we need answers to a number of questions before our hearings:

- Was Judge Alito a member of or contributor to CAP, a participant in any of its meetings or on its mailing list, (1) in 1973, when Senator Bradley's resignation letter was published in *Prospect*; (2) in 1974, when the controversy was first aired in the *New York Times*; (3) in 1977, when a lengthy article on CAP appeared in the *New Yorker*; or (4) in 1986 when the debate over CAP continued in the pages of the *Alumni Weekly*?
- What was the exact nature of Judge Alito's participation in CAP and his contacts or correspondence with its officers and staff during the years 1972-87?
- Judge Alito lists other Princeton alumni activities in his 1990 and 2005 Committee forms, indicating that he has remained an active and interested alumnus throughout the relevant period. Did he ever personally express a view either publicly or privately on the CAP controversy or the positions advocated by CAP, as many alumni did?
- Was anyone connected with CAP contacted regarding Judge Alito's involvement with CAP, either in connection with his New Jersey Bar application (1975), or in connection with his federal job applications and security clearances (1977, 1981, and 1985), his U.S. Attorney and Judicial nominations (1987, 1990), or his possible selection for the Supreme Court (2001, 2005)?
- At any time before Senator Bradley appeared before our Committee in 1990 to introduce then-U.S. Attorney Alito to the Committee and to endorse his Third Circuit nomination, did Judge Alito write, say or do anything documenting his general attention to CAP news or his specific awareness that Senator Bradley had been a public critic of CAP?
- Did Judge Alito inform Senator Bradley that he had been a participant in CAP before requesting or allowing Senator Bradley to recommend his confirmation as a judge on the Third Circuit?

- During his 1987 or 1990 confirmation processes, did Judge Alito, the Justice Department (including the FBI), or the ABA provide the Committee with any information relating to Judge Alito's membership in CAP?
- Would Senator Bradley's unqualified endorsement of Judge Alito for the Third Circuit have been affected if he had known of Judge Alito's involvement in CAP and his voluntary listing of his CAP membership in support of his selection as a Deputy Assistant Attorney General, the position which put him on track toward his later judicial appointment?

Answers to a large number of these questions are likely to be found in files in the possession of the Manuscript Division of the Library of Congress as part of the "Papers of William A. Rusher 1940-1989." Mr. Rusher was Publisher of the National Review and an active founder and leader of CAP. According to the Library's Register of that collection, at least four of its boxes (142, 143, 144, 145) contain the files of "Concerned Alumni of Princeton," including clipping files, background information, correspondence and memoranda, financial records, fund-raising material, lists of supporters, minutes of meetings, issues and other items relating to "Prospect." Box 46 also contains materials relating to T. Harding Jones, a founder of CAP and editor of "Prospect," and a person who reportedly involved Judge Alito in CAP. There may also be other files with records of CAP leaders who were familiar with the nominee's role.

The Congressional Research Service has attempted to gain access to these files, following its usual policy of not disclosing its requestor, but Mr. Rusher has refused to permit access unless he is told which member(s) or committee(s) are seeking it, and unless he can control the use of the materials released.

It is likely that a formal request for access directly from you on behalf of the Committee would be received with more cooperation than the CRS has received so far, and we urge you to make such a request as soon as possible. In view of the importance of the material and its intended use as part of an official Senate inquiry, the request should be for access to the documents without any restrictions on the Committee's use of the information, unless he is aware of specific documents in those files that merit confidential treatment for a stated reason. The request should include the specified boxes and any other boxes containing materials relating to CAP, its activities, or personnel, including "Prospect."

Judge Alito's assertion that he cannot recall anything about his controversial involvement in CAP, requires us to find other ways of fulfilling our constitutional responsibility to get at the facts. The Rusher papers provide a readily available means of doing so. Certainly we do not want to leave the Committee, the Senate, and the nation open to an unwelcome surprise when the papers eventually become public after Mr. Rusher's death.

As always, we thank you for your cooperation and leadership, and your commitment to making the confirmation process as thorough as possible.

Sincerely,


Edward M. Kennedy